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CUSTOMER NO. 22186

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

PATENT

Re: Attorney Docket No. 1043.001

In re application of: Stephen L. Biracree, Azzedine Tounzni, Thomas J. Endres, Christopher H. Strolle, Samir N. Hulyalkar and Raul A. Casas

Serial No.:	<u>09/761,303</u>	Group Art Unit:	<u>2631</u>
Filed:	<u>01/17/01</u>	Examiner:	<u>Kevin Burd</u>
Matter No.:	<u>ATI NW012</u>	Phone No.:	<u>571-272-3008</u>

For: Blind Cost Criterion Timing Recovery

**RESPONSE UNDER 37 CFR 1.116**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

This Response is filed in response to the final office action of 01/25/05.

**REMARKS/ARGUMENTS**

Claims 1-40 are pending in the application. The Applicant hereby requests further examination and reconsideration of the application in view of these remarks.

In paragraph 3 of the final office action, the Examiner rejected claims 1-40 under 35 U.S.C. 103(a) as being obvious over Paik in view of Endres.

The present application was filed on 01/17/01, while Endres (U.S. Patent No. 6,418,164) was still a pending U.S. patent application. The subject matter of Endres and the claimed invention were, at the time the invention was made, both owned by or subject to an obligation of assignment to the same legal entity Nxtwave Communications, Inc. As such, Endres is not a proper prior art reference for rejecting claims in the present application under 35 U.S.C. 103(a).

\* \* \* \* \*

**Certification Under 37 CFR 1.8**

Date of Deposit March 2, 2005.

I hereby certify that this correspondence is being deposited in the United States Postal Service with sufficient postage as first class mail under 37 CFR 1.8 on the date indicated above and is addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

MARY E. CANIZ.  
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